

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 205

AN ACT

To amend chapter 320, RSMo, by adding thereto nine new sections relating to reduced ignition propensity cigarettes, with penalty provisions and an effective date.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Chapter 320, RSMo, is amended by adding thereto
2 nine new sections, to be known as sections 320.350, 320.353,
3 320.356, 320.359, 320.362, 320.365, 320.368, 320.371, and
4 320.374, to read as follows:

5 320.350. 1. Sections 320.350 to 320.374 shall be known and
6 may be cited as the "Fire Safety Standard and Firefighter
7 Protection Act".

8 2. As used in sections 320.350 to 320.374, the following
9 terms shall mean:

10 (1) "Cigarette", an item manufactured of tobacco or any
11 substitute therefor, wrapped in paper or any substitute therefor,
12 weighing not to exceed three pounds per one thousand cigarettes
13 and which is commonly classified, labeled or advertised as a

1 cigarette;

2 (2) "Department", the department of revenue;

3 (3) "Manufacturer", any person engaged in the manufacture
4 or production of cigarettes;

5 (4) "Quality control and quality assurance program", the
6 laboratory procedures implemented to ensure that operator bias,
7 systematic and nonsystematic methodological errors, and
8 equipment-related problems do not affect the results of the
9 testing. Such a program shall ensure that the testing
10 repeatability remains within the required repeatability values
11 stated in subdivision (6) of subsection 1 of section 320.353 for
12 all test trials used to certify cigarettes in accordance with
13 sections 320.350 to 320.374;

14 (5) "Repeatability", the range of values within which the
15 repeat results of cigarette test trials from a single laboratory
16 will fall ninety-five percent of the time;

17 (6) "Retailer", any person who sells to a consumer or to
18 any person for any purpose other than resale;

19 (7) "Sale", in this instance is defined to be and declared
20 to include sales, barters, exchanges and every other manner,
21 method and form of transferring the ownership of personal
22 property from one person to another;

23 (8) "Sell", to sell, or offer or agree to do the same;

24 (9) "Wholesaler", any person, firm, or corporation
25 organized and existing, or doing business, primarily to sell
26 cigarettes or tobacco products to, and render service to,
27 retailers in the territory the person, firm, or corporation
28 chooses to serve; that purchases cigarettes or tobacco products

1 directly from the manufacturer; that carries at all times at his
2 or its principal place of business a representative stock of
3 cigarettes or tobacco products for sale; and that comes into the
4 possession of cigarettes or tobacco products for the purpose of
5 selling them to retailers or to persons outside or within the
6 state who might resell or retail the cigarettes or tobacco
7 products to consumers. This shall include any manufacturer,
8 jobber, broker, agent, or other person, whether or not enumerated
9 in this chapter, who so sells or so distributes cigarettes or
10 tobacco products.

11 320.353. 1. Except as provided in subsection 7 of this
12 section, no cigarettes shall be sold or offered for sale in this
13 state or offered for sale or sold to persons located in this
14 state unless the cigarettes have been tested in accordance with
15 the test method and meet the performance standard specified in
16 this section, a written certification has been filed by the
17 manufacturer with the state fire marshal in accordance with
18 section 320.356, and the cigarettes have been marked in
19 accordance with section 320.359. The following shall apply to
20 such testing:

21 (1) Testing of cigarettes shall be conducted in accordance
22 with the American Society of Testing and Materials (ASTM)
23 standard E2187-04, "Standard Test Method for Measuring the
24 Ignition Strength of Cigarettes";

25 (2) Testing shall be conducted on ten layers of filter
26 paper;

27 (3) No more than twenty-five percent of the cigarettes
28 tested in a test trial in accordance with this section shall

1 exhibit full-length burns. Forty replicate tests shall comprise
2 a complete test trial for each cigarette tested;

3 (4) The performance standard required by this section shall
4 only be applied to a complete test trial;

5 (5) Written certifications shall be based upon testing
6 conducted by a laboratory that has been accredited under standard
7 ISO/IEC 17025 of the International Organization for
8 Standardization (ISO), or other comparable accreditation standard
9 required by the state fire marshal;

10 (6) Laboratories conducting testing in accordance with this
11 section shall implement a quality control and quality assurance
12 program that includes a procedure that will determine the
13 repeatability of the testing results. The repeatability value
14 shall be no greater than nineteen one-hundredths;

15 (7) Nothing in this section shall be construed as requiring
16 additional testing if cigarettes are tested consistent with
17 sections 320.350 to 320.374 for any other purpose;

18 (8) Testing performed or sponsored by the state fire
19 marshal to determine a cigarette's compliance with the
20 performance standard required shall be conducted in accordance
21 with this section.

22 2. Each cigarette listed in a certification submitted under
23 section 320.356 that uses lowered permeability bands in the
24 cigarette paper to achieve compliance with the performance
25 standard set forth in this section shall have at least two
26 nominally identical bands on the paper surrounding the tobacco
27 column. At least one complete band shall be located at least
28 fifteen millimeters from the lighting end of the cigarette. For

cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least fifteen millimeters from the lighting end and ten millimeters from the filter end of the tobacco column, or ten millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

3. A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with the test method described in subdivision (1) of subsection 1 of this section shall propose a test method and performance standard for the cigarette to the state fire marshal. Upon approval of the proposed test method and a determination by the state fire marshal that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subdivision (3) of subsection 1 of this section, the manufacturer may employ such test method and performance standard to certify such cigarette under section 320.356. If the state fire marshal determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in sections 320.350 to 320.374, and the state fire marshal finds that the officials responsible for implementing such requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section, the state fire marshal shall authorize such manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in

1 this state, unless the state fire marshal demonstrates a
2 reasonable basis why the alternative test should not be accepted
3 under sections 320.350 to 320.374. All other applicable
4 requirements of this section shall apply to the manufacturer.

5 4. Each manufacturer shall maintain copies of the reports
6 of all tests conducted on all cigarettes offered for sale for a
7 period of three years, and shall make copies of such reports
8 available to the state fire marshal and the state attorney
9 general upon written request. Any manufacturer who fails to make
10 copies of such reports available within sixty days of receiving a
11 written request shall be subject to a civil penalty not to exceed
12 ten thousand dollars for each day after the sixtieth day that the
13 manufacturer does not make such copies available.

14 5. The state fire marshal may adopt a subsequent ASTM
15 Standard Test Method for Measuring the Ignition Strength of
16 Cigarettes upon a finding that such subsequent method does not
17 result in a change in the percentage of full-length burns
18 exhibited by any tested cigarette when compared to the percentage
19 of full-length burns the same cigarette would exhibit when tested
20 in accordance with ASTM Standard E2187-04 and the performance
21 standard in subdivision (3) of subsection 1 of this section.

22 6. The state fire marshal shall review the effectiveness of
23 this section and report every three years to the general assembly
24 the state fire marshal's findings and, if appropriate,
25 recommendations for legislation to improve the effectiveness of
26 sections 320.350 to 320.374. The report and legislative
27 recommendations shall be submitted by June thirtieth following
28 the conclusion of each three-year period.

1 7. The requirements of this section shall not prohibit:

2 (1) Wholesalers or retailers from selling their existing
3 inventory of cigarettes on or after the effective date of
4 sections 320.350 to 320.374 if the wholesaler or retailer can
5 establish that state tax stamps were affixed to the cigarettes
6 prior to such effective date and the wholesaler or retailer can
7 establish that the inventory was purchased prior to such
8 effective date; or

9 (2) The sale of cigarettes solely for the purpose of
10 consumer testing. For purposes of this subdivision, "consumer
11 testing" means an assessment of cigarettes that is conducted by a
12 manufacturer, or under the control and direction of a
13 manufacturer, for the purpose of evaluating consumer acceptance
14 of such cigarettes, utilizing only the quantity of cigarettes
15 that is reasonably necessary for such assessment.

16 8. The cigarette testing, performance standard, and
17 packaging provisions in sections 320.350 to 320.374 shall be
18 implemented in a manner to obtain uniformity with the laws of
19 those states that have enacted reduced cigarette ignition
20 propensity standards as of January 1, 2011.

21 320.356. 1. Each manufacturer shall submit to the state
22 fire marshal a written certification attesting that each
23 cigarette listed in the certification has been tested in
24 accordance with and meets the performance standard set forth in
25 section 320.353.

26 2. Each cigarette listed in the certification shall be
27 described with the following information:

28 (1) Brand or trade name on the package;

1 (2) Style, such as light or ultra light;
2 (3) Length in millimeters;
3 (4) Circumference in millimeters;
4 (5) Flavor, such as menthol or chocolate, if applicable;
5 (6) Filter or nonfilter;
6 (7) Package description, such as soft pack or box;
7 (8) Marking under section 320.359;
8 (9) The name, address, and telephone number of the
9 laboratory, if different than the manufacturer that conducted the
10 test; and
11 (10) The date that the testing occurred.
12 3. The state fire marshal shall make the certifications
13 available to the state attorney general and the department for
14 purposes consistent with sections 320.350 to 320.374. Not later
15 than January 31, 2011, the department shall develop, maintain,
16 and update in a timely manner a directory listing all cigarette
17 manufacturers and brand styles for which a certificate required
18 under section 320.356 has been filed with the state fire marshal.
19 The directory shall be for informational purposes only and shall
20 be continuously and conspicuously posted on the department's web
21 site for public inspection. Wholesalers and retailers may
22 lawfully purchase and sell any and all brand styles listed on the
23 directory, including inventory of said brand styles.
24 Notwithstanding the other provisions of this subsection, unless
25 enjoined by a court of competent jurisdiction under subsection 6
26 of section 320.362 or subject to sequestration under subsection 5
27 of section 320.362, any and all brand styles that satisfy the
28 requirements of section 320.353 may be lawfully sold in the

1 state.

2 4. Each cigarette certified under this section shall be
3 recertified every three years.

4 5. For each brand family of cigarettes listed for
5 certification, a manufacturer shall pay a fee of one thousand
6 dollars to the state fire marshal. The fee paid shall apply to
7 all cigarettes within the brand family certified and shall
8 include any new cigarette certified within the brand family
9 during the three year certification period.

10 6. If a manufacturer has certified a cigarette under this
11 section and thereafter makes any change to such cigarette that is
12 likely to alter its compliance with the reduced cigarette
13 ignition propensity standards required by sections 320.350 to
14 320.374, such cigarette shall not be sold or offered for sale in
15 this state until the manufacturer retests the cigarette in
16 accordance with the testing standards and maintains records of
17 such retesting as required by section 320.353. Any altered
18 cigarette which does not meet the performance standard set forth
19 in section 320.353 shall not be sold in this state.

20 320.359. 1. Cigarettes that are certified by a
21 manufacturer in accordance with section 320.356 shall be marked
22 to indicate compliance with the requirements of section 320.353.
23 The marking shall be in eight-point type or larger and consist of
24 the letters FSC, which signifies fire standard compliant,
25 permanently printed, stamped, engraved, or embossed on the
26 package at or near the UPC Code.

27 2. A manufacturer shall use only one marking and shall
28 apply such marking uniformly for all packages, including but not

1 limited to packs, cartons, and cases, and brands marketed by such
2 manufacturer.

3 3. Manufacturers certifying cigarettes in accordance with
4 section 320.356 shall provide a copy of the certifications to all
5 wholesalers to which they sell cigarettes. Wholesalers and
6 retailers shall permit the department and the state attorney
7 general, and their employees, to inspect markings of cigarette
8 packaging marked in accordance with this section.

9 320.362. 1. A manufacturer, wholesaler, or other person or
10 entity who knowingly sells or offers for sale cigarettes, other
11 than through retail sale, in violation of section 320.353 shall
12 be subject to a civil penalty not to exceed one hundred dollars
13 for each pack of such cigarettes sold or offered for sale;
14 provided that, in no case shall the penalty against any such
15 person or entity exceed one hundred thousand dollars during any
16 thirty-day period.

17 2. A retailer who knowingly sells or offers for sale
18 cigarettes in violation of section 320.353 shall be subject to a
19 civil penalty not to exceed one hundred dollars for each pack of
20 such cigarettes sold or offered for sale; provided that, in no
21 case shall the penalty against any retailer exceed twenty-five
22 thousand dollars for sales or offers for sale during any thirty-
23 day period.

24 3. In addition to any other penalty prescribed by law, any
25 corporation, partnership, sole proprietorship, limited
26 partnership, or association engaged in the manufacture of
27 cigarettes that knowingly makes a false certification under
28 section 320.356 shall be subject to a civil penalty of at least

1 seventy-five thousand dollars and not to exceed two hundred fifty
2 thousand dollars for each such false certification.

3 4. Any person who violates any other provision of sections
4 320.350 to 320.374 shall be subject to a civil penalty for a
5 first offense not to exceed one thousand dollars and for any
6 subsequent offense a civil penalty not to exceed five thousand
7 dollars for each such violation.

8 5. Whenever the state attorney general or the department
9 discovers any cigarettes for which no certification has been
10 filed as required by section 320.356 or that have not been marked
11 in the manner required by section 320.359, such cigarettes shall
12 be sequestered by the owner and not sold or transferred for
13 fourteen days, wherein the state attorney general may file an
14 action in a court of competent jurisdiction petitioning for
15 injunctive relief to enjoin the sale or offer for sale of such
16 cigarettes. If the state attorney general does not file an
17 action within fourteen days, the owner may lawfully sell the
18 sequestered cigarettes.

19 6. In addition to any other remedy provided by law, the
20 state attorney general may file an action in a court of competent
21 jurisdiction for a violation of sections 320.350 to 320.374,
22 including petitioning:

23 (1) For injunctive relief against any manufacturer,
24 importer, wholesaler, retailer, or any other person or entity to
25 enjoin such entity from selling, offering for sale, or affixing
26 tax stamps to any cigarette that does not comply with the
27 requirements of sections 320.350 to 320.374; or

28 (2) To recover any costs or damages incurred by the state

1 as a result of such violation, including enforcement costs
2 relating to the specific violation and attorney's fees.

3
4 Each violation of sections 320.350 to 320.374 or rules
5 promulgated thereto shall constitute a separate civil violation
6 for which the state attorney general may obtain relief. Upon
7 obtaining judgment for injunctive relief under this section, the
8 state attorney general shall provide a copy of the judgment to
9 all wholesalers to which the cigarettes have been sold.

10 320.365. 1. The department of revenue may promulgate rules
11 to implement the provisions of sections 320.350 to 320.374. Any
12 rule or portion of a rule, as that term is defined in section
13 536.010, RSMo, that is created under the authority delegated in
14 sections 320.350 to 320.374 shall become effective only if it
15 complies with and is subject to all of the provisions of chapter
16 536, RSMo, and, if applicable, section 536.028, RSMo. Sections
17 320.350 to 320.374 and chapter 536, RSMo, are nonseverable and if
18 any of the powers vested with the general assembly pursuant to
19 chapter 536, RSMo, to review, to delay the effective date, or to
20 disapprove and annul a rule are subsequently held
21 unconstitutional, then the grant of rulemaking authority and any
22 rule proposed or adopted after the effective date of this section
23 shall be invalid and void.

24 2. The department, in the regular course of conducting
25 inspections of wholesalers and retailers as authorized under
26 section 149.041, RSMo, may inspect such cigarettes to determine
27 if the cigarettes are marked as required by section 320.359. If
28 the cigarettes are not marked as required, the department shall

1 notify the state attorney general.

2 320.368. To enforce the provisions of sections 320.350 to
3 320.374, the state attorney general and the department are
4 authorized to examine only the books, papers, invoices, and other
5 business records pertaining to the sale and receipt of any type
6 of cigarettes suspected of failing to conform to the fire safety
7 requirements of sections 320.350 to 320.374 of any person in
8 possession or control of any premises where such cigarettes are
9 placed, stored, sold, or offered for sale, as well as the stock
10 of such cigarettes on the premises. Every person in the
11 possession or control of any premises where cigarettes are
12 placed, sold, or offered for sale is directed and required to
13 give the state attorney general and the department the
14 opportunity for the examinations authorized by this section.

15 320.371. 1. There is hereby created in the state treasury
16 the "Cigarette Fire Safety Standard and Firefighter Protection
17 Act Fund" which shall consist of moneys collected under sections
18 320.350 to 320.374. The fund shall be administered by the state
19 fire marshal. Upon appropriation, moneys in the fund shall be
20 made available to the state fire marshal to support fire safety
21 and prevention programs.

22 2. Notwithstanding the provisions of section 33.080, RSMo,
23 to the contrary, any moneys remaining in the fund at the end of
24 the biennium shall not revert to the credit of the general
25 revenue fund.

26 3. The state treasurer shall invest moneys in the fund in
27 the same manner as other funds are invested. Any interest and
28 moneys earned on such investments shall be credited to the fund.

1 320.374. 1. Nothing in sections 320.350 to 320.374 shall
2 be construed to prohibit any person or entity from manufacturing
3 or selling cigarettes that do not meet the requirements of
4 section 320.353 if the cigarettes are or will be stamped for sale
5 in another state or are packaged for sale outside the United
6 States and such person or entity has taken reasonable steps to
7 ensure that such cigarettes will not be sold or offered for sale
8 to persons located in this state.

9 2. Sections 320.350 to 320.374 shall terminate if a federal
10 cigarette ignition propensity standard is enacted.

11 3. Sections 320.350 to 320.374 preempt any local law,
12 ordinance, or regulation that conflicts with any provision of
13 sections 320.350 to 320.374 or any policy of the state
14 implemented in accordance with sections 320.350 to 320.374.
15 Notwithstanding any other provision of law, the local
16 governmental units of this state may neither enact nor enforce
17 any ordinance or other local law or regulation conflicting with,
18 or preempted by, any provision of sections 320.350 to 320.374 or
19 with any policy of this state expressed by sections 320.350 to
20 320.374 whether that policy is expressed by inclusion of a
21 provision in such sections or by exclusion of that subject from
22 such sections.

23 Section B. Section A of this act shall become effective
24 January 1, 2011.
25